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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,944	03/05/2002	Todor J. Fay	MS1-783US	7396
22801	7590	07/27/2005	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			FLETCHER, MARLON T	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,944

Applicant(s)

FAY ET AL.

Examiner

Marlon T. Fletcher

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/23/2005</u> | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-58 are rejected under 35 U.S.C. 102(a) as being anticipated by Kraft et al. (6,225,546).

Kraft et al. disclose an audio generation system, method, and computer readable media,

comprising: an audio processing component (214) configured to generate an audio rendition corresponding to audio wave data; audio wave track components (300) configured to generate playback instructions that are routed to the audio processing component to initiate the audio rendition being generated; and a segment component (206) configured to play one or more of the audio wave to track components to generate the playback instructions.

Kraft et al. disclose an audio generation system, method, and computer readable media,

comprising: MIDI track components (304) configured to generate event instructions that are routed to the audio processing component to initiate a second audio rendition corresponding to MIDI audio data, and wherein the segment component is further configured to play one or more of the MIDI track components to generate the event instructions.

Kraft et al. disclose an audio generation system, method, and computer readable media,
comprising: a segment state that includes programming references to each of the audio wave track components, the segment state configured to initiate that one or more of the audio wave track components generate the playback instructions (column 4, lines 31-51).

Kraft et al. disclose an audio generation system, method, and computer readable media,
comprising: one or more segment states that include programming references to each of the audio wave track components, the one or more segment states configured to a initiate that one or more of the audio wave track components generate the playback instructions such that the audio processing component generates one or more audio renditions corresponding to the audio wave data (column 4, line 51 through column 5, line 10).

Kraft et al. disclose an audio generation system, method, and computer readable media,
comprising: a performance manager that includes one or more segment states, each segment to state including programming references to each of the audio wave track components, and each segment state configured to initiate that one or more of the audio wave track components generate the playback instructions (figure 2).

Kraft et al. disclose an audio generation system, method, and computer readable media,

comprising: one or more performance managers that each include a segment state having programming references to each of the audio wave track components, the segment state configured to initiate that one or more of the audio wave track components generate the playback instructions (column 5, line 41 through column 6, line 13).

Kraft et al. disclose an audio generation system, method, and computer readable media,

wherein the audio processing component is a synthesizer component configured to receive the audio wave data from one or more audio wave data sources, and is further configured to generate the audio rendition in response to the playback instructions (column 5, line 62 through column 6, line 4).

Kraft et al. disclose an audio generation system, method, and computer readable media,

comprising: at least a second audio processing component (216) configured to receive the playback instructions from the one or more audio wave track components, the second audio processing component further configured to generate a second audio rendition corresponding to the audio wave data.

Kraft et al. disclose an audio generation system, method, and computer readable media,

wherein the audio wave track components are further configured to maintain the audio wave data as an embedded audio wave data source (MIDI).

Kraft et al. disclose an audio generation system, method, and computer readable media,
wherein the segment component is further configured to maintain the audio wave data as an embedded audio wave data source (MIDI).

Kraft et al. disclose an audio generation system, method, and computer readable media,
wherein the audio wave track components are further configured to randomly select a variation of the audio wave data such that the segment component plays the one or more audio wave track components that correspond to the variation selection (column 7, line 53 through column 9, line 15).

Kraft et al. disclose an audio generation system, method, and computer readable media,
wherein the audio wave track components include programming references to variations of the audio wave data, and wherein the audio wave track components are further configured to randomly select a variation of the audio wave data such that the segment component plays the one or more audio wave track components that correspond to the variation (column 7, line 53 through column 9, line 15).

Kraft et al. disclose an audio generation system, method, and computer readable media,
wherein the audio wave track components generate the playback instructions to include one or more of the following: one or more programming references to the audio wave data; a start time to initiate the audio rendition being generated; a volume parameter

that is a decibel gain applied to the audio wave data; a pitch parameter that identifies an amount that the audio wave data is to be transposed; a variation parameter that identifies whether the audio wave data to corresponding to a particular audio wave track component is to be played; a duration parameter that identifies how long audio wave data corresponding to a particular audio wave track component will be played; and is a stop play parameter that stops the audio rendition from being generated (as discussed in column 5, lines 40-55 and column 8, lines 1-37).

Response to Arguments

3. Applicant's arguments filed 04/26/2005 have been fully considered but they are not persuasive. Applicant makes arguments regarding the differences between the claimed invention and prior art. These differences are not reflected in the claims. The claims are written in a broad manner and are interpreted as such. As written, the examiner feels that the claim limitations are met by the prior art applied. For this reason, the rejection is maintain.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-W, F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Marlon T Fletcher
Primary Examiner
Art Unit 2837

MTF

July 25, 2005